

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)**

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/US2004/029554

International filing date (day/month/year)
08.09.2004

Priority date (day/month/year)
18.09.2003

International Patent Classification (IPC) or both national classification and IPC
H04L12/56

Applicant
CISCO TECHNOLOGY, INC.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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**WRITTEN OPINION OF THE
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International application No.
PCT/US2004/029554

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
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International application No.
PCT/US2004/029554

Box No. II Priority

1. ☒ The following document has not been furnished:

- ☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).
- ☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. ☐ It has not been possible to consider the validity of the priority claim because a copy of the priority document was not available to the ISA at the time that the search was conducted (Rule 17.1). This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.
4. Additional observations, if necessary:

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	3,5-10,13,15-17,20,23-27
	No: Claims	1,2,4,11,12,14,18,19,21,28
Inventive step (IS)	Yes: Claims	3,5-10,13,15-17,20,23-27
	No: Claims	1,2,4,11,12,14,18,19,21,28
Industrial applicability (IA)	Yes: Claims	1-28
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item V.

- 1 The following documents are referred to in this communication:

D1 : EP 1 309 135 A1 (ALCATEL) 7 May 2003 (2003-05-07)

D2 : US 2003/037165 A1 (SHINOMIYA DAISUKE) 20 February 2003 (2003-02-20)

- 2 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1, 11, 18 and 28 is not new in the sense of Article 33(2) PCT.

2.1 Claim 1

Document D1 discloses (the references in parentheses applying to this document):

A method of providing high availability for a network (paragraph [0004]), the method comprising:

configuring a first supervisor in a first chassis of a virtual network device as an active supervisor;

and configuring a second supervisor in a second chassis of the virtual network device as a standby supervisor for the virtual network device (paragraph [0005]).

It should be noted that even if the applicant were to interpret claim 1 in such a manner as to enable him to allege that their subject matter was formally novel, based on non-substantial differences between the features of these claims and those disclosed in documents D1-D2, the subject matter of claim 1 would still not involve an inventive step (Articles 33(1) and 33(3) PCT). Especially as these documents address the same technical problem and disclose the same type of solution as claimed by the applicant.

2.2 Claims 11, 18 and 28

The same reasoning applies, *mutatis mutandis*, to the subject-matter of the corresponding independent claims 11, 18 and 28, which therefore are also considered not new.

- 3 Claims 2,4,12,14,19 and 21
Dependent claims 2,4,12,14,19 and 21 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty or inventive step, see documents D1 and D2 and the corresponding passages cited in the search report.
- 4 Although claims 11,28, have been drafted as separate independent claims(apparatus claims), they appear to relate effectively to the same subject-matter. They differ from each other only, with regard to the definition of the subject-matter for which protection is sought, in respect of the order used for the features of that subject-matter. The aforementioned claims therefore lack conciseness and as such do not meet the requirements of Article 6 PCT. Moreover the application is such that a single independent apparatus claim followed by a set of dependent claims would appear appropriate(Rule 6.4 PCT).